

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

**LEON J. FEINERMAN,
EARL HARRIS, AND
CONSTANCE BUXTON,**

Respondent.

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**DOCKET NO. 07-3441-DB
DOCKET NO. 07-3432-DB
DOCKET NO. 07-3443-DB**

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By separate Notices dated July 30, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified each of the respective Respondents, LEON J. FEINERMAN, EARL HARRIS, and CONSTANCE BUXTON, that HUD was proposing their debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from the date of final determination of this action. HUD advised each of the Respondents in the July 30, 2007 Notice that the proposed debarment action was in accordance with the procedures set forth in 24 CFR part 24^[1].

The respective Notices informed each Respondent that the proposed debarment was based on the acts and omissions of the Harrisburg (Pennsylvania) Housing Authority (HHA) during Respondents' tenure on the HHA's Board of Commissioners.^[2] The Notice further explained to each of the Respondents that "[t]he acts and omissions of the HHA are imputed to [them] pursuant to 24 CFR 24.630(b) because as a member of HHA's Board, [they] participated in, had knowledge of, or had reason to know of the violations."

^[1] HUD published a final rule on December 27, 2007 (72 FR 73484) that relocated and recodified 24 CFR part 24 as 2 CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180," the government-wide rule published by OMB on August 31, 2005 (70 FR 51863) setting forth guidance for agencies with respect to nonprocurement debarment and suspension. However, because this matter arose before publication of HUD's final rule, for the convenience of the reader, references herein will be to the regulations in their former location at 24 CFR part 24.

^[2] Respondent Feinerman has been a member of the HHA Board since 1983 to the present. Respondents Harris and Buxton became Board members in December 1999. Reverend Harris continues to serve to the present time. Respondent Buxton is no longer a member of the Board.

The violations were described in the respective Notices as Respondents' "allowing large sums of HHA's operating subsidy funds, which it receives annually from HUD for the purpose of developing and operating the HHA, to be used to fund . . . the Greater Harrisburg Community Credit Union (GHCCU) without obtaining HUD's authorization for such expenditures" in violation of the Annual Contributions Contract (ACC) between HUD and HHA.

The Notices specifically cited the provision in Section 9(B) of the ACC that requires the housing authority to place all funds it holds into the "General Fund." Further, the Notices set forth the restrictions in Section 9(C) on the use of the General Fund monies as including (1) "payment of the costs of development and operation of the projects under the ACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD." The Notices also advised Respondents that "GHCCU is not an operation or function of HHA, nor is it an HHA owned property covered under the ACC."

The specific charges against each of the Respondents were that in 2003 and 2004, they voted to transfer \$30,000.00 and \$505,000.00,^[3] respectively, of HHA's operating subsidy funds to GHCCU. Because HHA did not obtain HUD approval, the payments to GHCCU violated Section 9 of the ACC.

A hearing on Respondents' proposed debarment was held in Washington, D.C. on January 30, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondents Feinerman and Harris were present at the hearing (Respondent Buxton was not present). Respondents were represented by Mona Lyons, Esq., and Lee Reno, Esq., and Sarah Molseed, Esq. of Reno and Cavanaugh. Brendan Power, Esq. appeared on behalf of HUD.

SUMMARY

I have determined, pursuant to 24 CFR part 24, to debar Respondents Feinerman and Buxton for a period of three years from the date of this Determination and to debar Respondent Harris for a period of eighteen months from the date of this Determination from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government. My decision is based on the administrative record in this matter, which includes the following information:

- 1) The Notices of Proposed Debarment dated July 30 2007.

^[3] With respect to Respondent Harris, the government notes that the "Notice of Debarment directed against Harris incorrectly states that in 2004 Harris voted to authorize HHA to transfer \$505,000 to GHCC over a four-year period." The footnote states that Reverend Harris was not present at the September 9, 2004, HHA Board meeting. See Government's Brief in Support of Three-Year Debarment of Respondent Harris at n.5 (Harris Brief).

- 2) A letter dated August 31, 2007, addressed to the Debarring Official's Designee from Respondents' attorney.
- 3) The Government's Motion to Refer to a Hearing Officer, filed December 3, 2007.
- 4) Respondents' Opposition to Government's Motion to Refer to a Hearing Officer, filed December 21, 2007.
- 5) Government's Request for Leave to File Its Reply in Support of Its Motion to Refer to a Hearing Officer, filed January 11, 2008.
- 6) The Government's Reply in Support of Its Motion to Refer to a Hearing Officer, filed January 11, 2008.
- 7) 7) The separate briefs filed October 19, 2007, by the Government with respect to each of the Respondents, styled Government's Brief in Support of Three Year Debarment (including all exhibits and attachments thereto).
- 8) Brief of Respondents Leon J. Feinerman, Earl Harris, and Constance Buxton in Opposition to Debarment, filed November 20, 2007 (including all exhibits thereto).
- 9) The Debarring Official's Designee's notes from a conference call held January 18, 2008, with counsel for the parties.
- 10) The digital recording of the January 30, 2008, hearing.

HUD'S ARGUMENTS

HUD argues that Respondents, who were all board members of the HHA, either participated in, knew of, or had reason to know that their actions in "diverting" monies from the HHA General Fund to fund the GHCCU, without obtaining HUD's authorization, was a violation of the ACC. Respondent Feinerman, chair of HHA's board, executed the ACC in 1997 on behalf of the board.^[4] HUD notes that, pursuant to 24 CFR 968.105, the ACC describes the requirements that govern the PHA's actions with respect to the operation and management of a housing authority. HUD notes further that the GHCCU was not an HHA program or operation and did not limit its membership to HHA residents.^[5]

HUD argues that in furtherance of its support for the GHCCU, HHA "improperly disbursed \$841,655^[6] from its General Fund to GHCCU," as shown by GHCCU's own records. Each of the respondents was a participant at various Board meetings and actively supported the funding of GHCCU from HHA's General Fund,^[7] including the

^[4] The Government's arguments summarized here generally relate to all three Respondents. Where there are specific differences in the actions of the three Respondents that bear on their alleged culpability, based on the Government's arguments, these will be noted. For the most part, however, immaterial differences in the allegations against the three Respondents, especially to the extent those differences play no part in the Determination, will not be treated at length here.

^[5] The record reveals that up to the time of its closure, only a small minority of GHCCU's membership was drawn from the residents of HHA.

^[6] The OIG Audit Report holds that HHA improperly disbursed \$834,969.00. See Audit Report Number 2007-PH-1013, issued September 27, 2007.

^[7] See, e.g., HUD's Brief in Support of Three-Year Debarment of Feinerman at pp.4 ff.(Feinerman Brief); HUD's Brief in Support of Three-Year Debarment of Harris at pp.5 ff (Harris Brief); and HUD's Brief in Support of Three-Year Debarment of Buxton at pp.4 ff (Buxton Brief).

signing of HHA checks therefor (Feinerman), making motions to approve contributions of HHA funds to GHCCU (Harris), and cosigning of HHA checks to transfer funds to the credit union and membership on GHCCU's Board (Buxton).

It is these actions recited above that HUD argues should result in Respondents' debarment. First, HUD argues that each of the Respondents in their capacity as an HHA Board member "is a 'person' and a 'participant' as those terms are defined by HUD regulations." Further, as commissioners of a housing authority, Respondents "are considered supervisors" of a housing authority, thus they "are participants engaged in primary covered transactions, and are subject to HUD sanctions under 24 CFR part 24."

HUD next argues that there is cause for debarment of Respondents under 24 CFR 24.800(b)(1) "because HHA contributed \$841,655 of its General Fund to GHCCU without first obtaining HUD's authorization, which is a willful violation of Section 9(C) of the ACC." HUD also contends that there is cause for debarment under 24 CFR 800(b)(2)(a) based on HHA's "history of failure to perform in accordance with program requirements," citing the large "unauthorized" contributions made to GHCCU over several years.

With respect to each of the Respondents, HUD argues that "the record plainly shows that [they] knew or had reason to know" that approving the contributions from the General Fund to GHCCU "without obtaining HUD's prior authorization was prohibited by Section 9 of the ACC." Further, applicable Pennsylvania law imposes on Respondents the responsibility to make "sure that the requirements set forth in the ACC are followed." The ACC, HUD argues, "is not an obscure government publication[:]" thus, Respondents must have known that funding GHCCU "was in violation of Section 9 of the ACC."

HUD contends that there also is cause for debarment of Respondents under 24 CFR 24.800(d). Respondents' conduct was irresponsible in that they violated their obligation to safeguard federal funds by making a gift of HHA funds to GHCCU, "thereby permanently depriving HHA and its residents from those funds."

The wrongful actions of HHA detailed above, HUD argues, are imputable to Respondents under 24 CFR 24.630(b) because they "participated in, knew of, or had reason to know of the improper conduct."

HUD dismisses HHA's argument that HUD's interpretation of Section 9 of the ACC is overly restrictive. HHA was responding to the OIG's conclusion in its audit that HHA improperly disbursed its General Funds monies to GHCCU. HUD characterizes as erroneous HHA's claim that "the expenditures were appropriate as an eligible tenant service under the [U.S. Housing] Act's definition of operations, or in furtherance of a permissible arrangement under Section 13 of the [U.S. Housing] Act to enter into business relationships with affiliated entities to provide tenant services."

HUD argues that HHA misstates the Act's meaning of certain terms therein. According to HUD, "a plain reading of Section 3(c)(2) of the Act shows that 'operations' and 'tenant programs and services' only pertain to activities that are conducted for the sole purpose of benefiting the PHA and its tenants (or residents), and not for businesses that are open to the public at large."

Section 13 of the Act, HUD insists, "does not authorize PHAs to withdraw its General Funds monies for non-housing authority purposes without obtaining HUD's permission." HHA, HUD points out, admits that it failed to obtain HUD approval. HUD also rejects HHA's claims that it had a choice to disclose to HUD its intentions to make contributions to GHCCU or to list the contributions as a line item in its annual plan. Similarly, HUD rejects HHA's claim that it satisfied "all disclosure requirements under 24 CFR part 903" by including a statement that HHA "would continue to establish partnership agreements" etc. HUD states that "[s]uch a general statement of intent fails to satisfy 24 C.F.R. 903.7(l)(1)."

HUD concludes that Respondents did not act responsibly in their supervision of HHA, and their claim of "good faith reliance upon the advice of professionals, consultants, management, and staff is without merit." Accordingly, Respondents three-year debarment is warranted and is necessary to protect the public interest.

RESPONDENTS' ARGUMENTS

Respondents raise as general contentions that HUD cannot dispute that the HHA residents needed the financial resources offered by a credit union. Moreover, none of the Respondents knew that the contributions to GHCCU from HHA were not approved by HUD. Consequently, "given the benign nature of the [Respondents'] alleged wrongdoing . . . HUD's proposed debarments of them are without factual and legal basis, and punitive."

Respondents note as background to the instant dispute that a mayoral task force recommended the establishment of a low-income credit union to serve the low-income residents of the city. The then-Executive Director of HHA along with the commissioners serving at the time, including Respondent Feinerman, believed that a credit union could offer HHA residents a benefit equal to other recognized resident services. Over half of the responses received to a survey canvassing the possible need for a credit union were from HHA residents. In April 1999, the responsible state agency approved the credit union's eligible membership base to include all persons who lived and worked in the City of Harrisburg, including the residents of HHA. In June 1999, GHCCU was designated by the National Credit Union Administration (NCUA) as a low-income credit union.

The Executive Director (ED) of the HHA was appointed Chair of the credit union's Board. At an HHA Board meeting in October 1999, the ED informed HHA's commissioners that \$500,000. 00 had been set aside to support the operations of the credit union over a five-year period. The details of this commitment, as the HHA Board understood it, were set forth in the Comprehensive Grant Program Annual Submission

("Submission") when it was approved by HUD. However, as sworn to by the responsible employee in his declaration attached to Respondents' brief as Respondents' Exhibit 5, he inadvertently omitted in the Submission to HUD a description of the planned financial support for GHCCU^[8]. In his declaration, the employee swears that he informed the ED of his mistake and suggested that the credit union could be supported from an account tied to the operating subsidy. The employee admits in his declaration that he "did not inform the HHA Board that the financial support for the credit union was not included in the plan submitted to HUD."^[9]

Respondents acknowledge that by 2004 the \$500,000.00 set aside had been spent and the HHA Board approved a further multi-year commitment of \$495,000.00. It is Respondents' position that at every HHA Board meeting at which the HHA funding of the credit union was discussed, the HHA general counsel and ED along with other senior staff were present. Moreover, the Board was never advised that funding of the credit union was improper nor of the failure to inform HUD of the financial support to GHCCU.

It is against this factual background, as described by Respondents, that Respondents reject the arguments offered by HUD to justify their debarment. First, Respondents contend that there is no basis for HUD's argument that, pursuant to 24 CFR 24.800(b), their votes to fund GHCCU, as described above, constituted "willful failure to perform" or a "willful violation of a legal or contractual obligation." HUD's argument is baseless because, Respondents claim, they did not know that HUD was not informed of the contributions to be made to GHCCU nor that the contributions were ineligible under the ACC or the Housing Act of 1937. Additionally, Respondent Feinerman argues that he knew at least one housing authority had established a credit union, that HUD facilitated meetings to accomplish that goal, and that "HHA's professional staff, and its general counsel, had no concerns about the eligibility and propriety of the expenditures for GHCCU."

Respondents argue that willfulness "denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental," or "a thing done without ground for believing it is lawful or conduct marked by a careless disregard whether or not one has the right so to act," citing *United States v. Murdock*, 290 U.S. 389 (1933). As such, "[a]n individual does not willfully violate a public agreement or transaction if the person does not know that he or she is violating the agreement or transaction." Moreover, "signing a document containing erroneous information is not 'willful' unless the signer has knowledge of the error." (Citation omitted) In light of these authorities, and because HUD has the burden of proving that cause for debarment exists, HUD has "wholly failed to meet it on the grounds that the HHA commissioners engaged in 'willful' wrongdoing."

Respondents also argue that it is not clear that either the Housing Act of 1937 or the ACC requires HUD approval for the use of public housing funds to support a credit union. In any event, say Respondents, even accepting HUD's interpretation of the law,

^[8] Schenck Declaration at ¶ 5.

^[9] *Id.*, at ¶ 7.

HUD has not demonstrated that the Respondents knew that funding GHCCU was in violation of the ACC, or that they “acted with reckless disregard for the ACC when they voted to fund GHCCU.”

As an additional challenge to HUD’s willfulness argument, Respondents cite HUD Board of Contract cases for the proposition that a “wrongful act is not willful if it is based on a misunderstanding of the applicable law or undertaken without knowledge of the law or public agreement.” So too, “willful conduct is distinguishable from a mistake.” (Citations omitted) Respondents thus conclude that because they “had no reason to believe that their actions did not conform to the requirements of the ACC, they cannot be found to have acted willfully even if they were mistaken.”

Respondents argue further that pursuant to applicable Pennsylvania law, HHA is empowered to hire, among others, technical experts. See 35 Pa. Cons. Stat. § 1547. Further, Respondents argue that HHA is a governmental corporation and in accordance with 42 Pa. Cons. Stat. § 8332.5(b), directors of a governmental corporation are subject to the standards and immunities that apply to non-profit organizations. Accordingly, because HHA is a governmental corporation, “its commissioners are subject to the standards applicable to non-profit directors.” In this regard, Respondents argue that under 15 Pa. Cons. Stat. § 5712, a director is “entitled to rely in good faith on information [and] opinions, . . . prepared by . . . officers or employees . . . counsel . . . or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person.”

Respondents thus contend that their decisions to fund the credit union that HUD now challenges as willful violations of the law or ACC were made by them subsequent to their receiving advice and information from two experienced executive directors. Furthermore, HHA’s general counsel was present at the Board meetings when the funding issue was discussed and decided. Therefore, Respondents argue, they properly relied on the expertise of the professional and executive staff for guidance with respect to the law and the ACC. As Respondents see it, their reliance on their staff and general counsel for guidance on the provisions of the ACC makes a charge of willful violation untenable, because “neither bad advice nor reliance on it rises to the level of a willful violation under 24 CFR 24.800(b).”

Respondents take issue with what they view as HUD’s implication that the ACC is so clear and unambiguous in its terms that they should have known that their funding decisions violated it. Respondents argue that the ACC is a generic document that does not describe in detail applicable HUD’s regulations. For example, say Respondents, the ACC does not specify which expenditures are prohibited or what constitutes an eligible resident service, nor does HUD provide such guidance. Additionally, the provisions of Section 3 and Section 9 of the ACC as they relate to critical terms like “operation” and “project” seem to be in conflict. This conflict is evident, Respondents argue, in their construction of the ACC that is clearly contrary to HUD’s position. Respondents’ position is that because resident services are included in the definition of “operation” in

section 3(c)(2) of the Housing Act of 1937, the services can be funded without HUD's approval.

Respondents make the argument that because HUD "was actively promoting credit unions as a resident service at the time GHCCU was created, one might reasonably assume that HUD considered credit unions to be eligible resident services." HUD, however, disagrees. The result, as Respondents view it, is that no matter which interpretation is correct, "the provisions are at least ambiguous and arguably conflicting," thus "HUD has not established, and cannot establish", that their actions "constituted willful violations of the ACC or the law."

Respondents contend that their decision to fund the credit union is no cause for debarment because they have no history of failure to perform or of unsatisfactory performance of any public agreements or transactions. Only two acts, the two commitments in 1999 and 2004, respectively, to fund GHCCU "could even arguably warrant debarment." The other actions with respect to funding GHCCU involved implementation of the two decisions, and "the implementation of a decision over time does not constitute a history of decision-making." Respondents also note that during the time at issue here, HHA was rated by HUD as either a standard or high performer. Thus, there is no cause for debarment under 24 CFR 24.800(b)(2).

Similarly, Respondents reject HUD's contention that debarment is warranted under 24 CFR 24.800(d). First, Respondents argue that they fulfilled their duties under Pennsylvania law, and their doing so "establishes their present responsibility as a matter of law." In addition, Respondents argue that they were faithful in discharging "their fiduciary duties to the agency they serve as volunteers," and followed the advice of legal counsel and other professionals with respect to establishing and supporting GHCCU. Respondent Feinerman also knew at the time the issue of establishing GHCCU was being discussed that other housing authorities, including Binghamton Housing Authority in New York, were supporting credit unions. Respondents also note that during the relevant time period, HHA's books were audited annually, including examination of its operations to determine compliance with regulatory requirements. None of the audits questioned HHA's financial support for GHCCU.

Respondents reject, too, HUD's charge that they failed to safeguard federal funds and permanently deprived HHA residents of the use of the funds given to GHCCU. Respondents point out that, in light of the OIG audit, HHA has determined to repay the funds given to the credit union. Respondents also disagree with HUD that they failed in their supervisory responsibility with respect to HHA and use of its funds, because it is not their responsibility as commissioners to obtain prior approval of specific expenditures. Such operational details, Respondents argue, are the responsibility of the Executive Director and the staff. It is Respondents' position that to the extent they "did not act with knowledge that required HUD approval was absent, or disregard the need for such approval . . . , the failure to obtain prior approval [of the contributions to GHCCU] does not, and legally cannot, implicate their present responsibility."

Accordingly, Respondents argue that because they have fulfilled and continue to fulfill their fiduciary duties, and because HHA has suffered no permanent harm, HUD has failed to establish a cause so compelling that it bears on their present responsibility. In this regard, Respondents note that the contributions made to GHCCU, while substantial, were made over an eight-year period and accounted for less than one percent of HHA's budget.

Respondents cite as further mitigating factors, HHA's intent to repay the federal funds with non-federal funds, their dedicated service as public servants, their contention that the alleged wrongdoing was isolated and not pervasive, their cooperation or willingness to cooperate with HUD to resolve the OIG findings, and their commitment to implement new policies and internal controls to ensure compliance with HUD regulations, applicable law, and the ACC.

Respondents note that their conduct, which is now at issue, began over ten years ago. For that reason, their present responsibility "cannot genuinely or fairly be called into question and the only purpose served by their debarments would be punitive and contrary to law." Moreover, their debarment would be "contrary to public policy limiting the liability of directors . . . and would deter qualified and competent individuals from offering their services to" PHA's.

Respondents conclude that HUD has failed to establish adequate factual or legal grounds to debar them "and its flawed and unfair efforts to do so constitute an abuse of its debarment authority." Further, even if the evidence is considered sufficient to establish cause for debarment, "it simultaneously mitigates against debarment and demonstrates that the actions proposed by HUD are unjustified, stale and contrary to public policy." Accordingly, Respondents urge dismissal of their proposed debarment.

FINDINGS OF FACT

1. During all relevant times in this matter, Respondents Feinerman, Harris, and Buxton served on the HHA Board of Commissioners, as unpaid volunteers.
2. Respondents, in their capacity as commissioners of HHA, determine policy and have overall supervisory authority over the operation of HHA.
3. In 1996, the Mayor of Harrisburg established a task force to consider the banking and credit needs of the low income community in Harrisburg and Respondent Harris served on the task force.
4. In 1999, the GHCCU was designated as a low-income credit union.
5. Respondent Feinerman and the other commissioners serving at that time,^[10] believed that the availability of a credit union to HHA residents would be a benefit to the residents.
6. GHCCU's membership was not limited to HHA residents but included non-residents, businesses and other individuals in the city of Harrisburg.

^[10] Respondents Harris and Buxton were not appointed to the HHA until December 1999. Ms Buxton resigned from the Board in July 2007.

7. The first chair of the GHCCU Board was Dorsey Howard, also the then-Executive Director of HHA.
8. Respondent Feinerman was informed by Dorsey Howard that the Binghamton Housing Authority (BHA),¹¹ was involved in the establishment of a credit union for its residents and staff and that HUD sponsored a training session for PHAs interested in creating credit unions; however, no information was provided to the Board confirming the establishment of a credit union by BHA, the type of training provided by HUD to support credit unions or that HUD funds were approved for the creation of the BHA or any other credit union.
9. At a HHA Board meeting in October 1999, Dorsey Howard informed Board members Feinerman, Martini and Jones that he recently became chairman of the GHCCU and that "the housing authority, in its five year plan, has set aside up to \$100,000¹² a year for operating subsidy".
10. The employee responsible for preparing the Plan, Mr. Jerry Shenck did not include the set aside in the submission to HUD.
11. Section 9(B) of the ACC provides that "All monies . . . received by or held for the account of the HA in connection with the development, operation and improvement of projects . . . shall constitute the General Fund."
12. Section 9(C) of the ACC provides that the HA may withdraw funds from the General Fund only for: "(1) the payment of the costs of development and operation of the projects under the ACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD."
13. The ACC for the HHA was executed by Respondent Feinerman on behalf of HHA and governs the use of program funds provided by HUD.
14. The benefits, composition of Board and amount of funding needed by GHCCU were discussed in HHA Board meetings, in the presence of HHA's general counsel, executive directors,¹³ and other professional staff.
15. The HHA Board did not solicit, make inquiry, or receive any legal opinion or professional advice from legal counsel, professional staff or HUD as to whether the use of HUD funds for the establishment or support of a credit union was an eligible expense under section 9 of the ACC.
16. HHA did not request or receive HUD approval to fund GHCCU.
17. At the HHA Board meeting of September 11, 2003, Board members Feinerman, Buxton and Harris voted to transfer \$30,000 to the GHCCU.
18. At the HHA Board meeting of September 9, 2004, Board members Feinerman and Buxton voted to transfer \$495,000 to the GHCCU.
19. In FY'2006 an audit by the HUD Office of Inspector General (OIG) identified improprieties in connection with HHA's financial contributions to GHCCU.¹⁴

¹¹ At the hearing, neither party provided relevant details of the Binghamton Housing Authority credit union.

¹² The minutes of the meeting do not identify who in the HHA authorized or approved the set-aside or when it was approved.

¹³ Mr. Dorsey died in August 2001, and was succeeded by Carl Payne as Executive Director.

¹⁴ An OIG audit of HHA's FY 2006 operations determined that HHA "did not administer its low-rent housing program in accordance with HUD regulations." Specifically, the OIG found that HHA "improperly disbursed \$834,969.00 in operating funds from its low-rent public housing program to open and support" GHCCU.

CONCLUSIONS

Based on the above Findings of Fact, I have made the following conclusions:


1. Respondents were participants in a covered transaction, as defined in 24 CFR part 24, and members of the Board of the HAA.
2. The ACC was executed by the Chairman of the Board of Directors on behalf of the HHA Board and the Board is aware that the terms and conditions of the Annual Contributions Contract govern the use of HUD funds.
3. Section 9(C) of the ACC prohibits the use of HUD funds except for the payment of "costs of development and operation of the projects under ACC with HUD"; the "purchase of securities as approved by HUD" and "such other purposes as may be specifically approved by HUD".
4. The HHA Board voted in 2003 to transfer \$30,000 to the GHCCU and voted in 2004 to transfer \$495,000 to the GHCCU in violation of Section 9 (C) of the ACC.
5. The transfer of funds to the GHCCU did not constitute costs of "development" or "operation" because the GHCCU is not a "project under ACC with HUD"; the transfer was not an "investment security" approved by HUD and the transfer as "such other purpose" under Section 9 (C) was not approved by HUD.
6. The HHA Board actions in failing to comply with the specific terms of the ACC on more than one occasion and its failure to solicit or make affirmative inquiry to determine whether funding of the GHCCU was appropriate under the ACC, and if not to obtain approval, constitutes a willful failure to perform, a history of failure to perform and unsatisfactory performance in accordance with the ACC so serious as to affect the integrity of the program.
7. The HHA Board actions resulted in a financial loss to the HHA and warrant debarment because they are so serious that they affect Respondents' present responsibility.
8. The improper conduct of the HHA Board is imputable to Respondents pursuant to 24 CFR 24.630(b) who participated in, had knowledge of, or had reason to know of the improper conduct.
9. Respondents Feinerman, Harris and Buxton voted at the September 11, 2003 HHA Board meeting to transfer \$30,000 to the GHCCU in violation of Section 9 (C) of the ACC.
10. Respondents Feinerman and Buxton voted at the September 9, 2004 HHA Board meeting to transfer \$495,000 to the GHCCU in violation of Section 9 (C) of the ACC.

11. Pursuant to 24 CFR 24.850, HUD "has established the cause for debarment by a preponderance of the evidence" and under 24 CFR 24.855, HUD has met its "burden to prove that a cause for debarment exists."
12. The evidence supports debarment based on 24 CFR 24.800(b) and (d).
13. The actions of Respondents Feinerman and Buxton at the Board meetings on September 11, 2003 and September 9, 2004 resulted in the unauthorized transfer of \$525,000 by the HHA to the GHCCU and warrant a debarment of three years.
14. The actions of Respondent Harris at the Board meeting on September 11, 2003 resulted in the unauthorized transfer of \$30,000 by the HHA to the GHCCU and warrants a debarment of eighteen months.
15. Respondents offer several factors in mitigation of their actions, all of which have been considered in the terms of the debarments. The cooperation of Respondents in resolving the audit findings is acknowledged. Although Respondents allege that they have taking certain steps to put procedures and controls in place, including the creation of a governance committee and an audit committee to avoid a repetition of a similar problem and a proposal to repay all the funds contributed to GHCCU with non-federal funds, no affirmative action have been taken by any of the respondents or the HHA Board to implement the steps, controls or repayment suggested and to avoid a reoccurrence.
16. Respondents suggest that their debarments would be contrary to public policy and would discourage qualified persons from volunteering to serve housing authorities; however HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may adversely affect the integrity of its programs and debarment is an appropriate action.
17. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act responsibly and with sufficient care for the duties entrusted to them.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 24 CFR 24.870(b)(2)(i) through (b)(2)(iv), to debar Respondents Feinerman and Buxton for a period of three years and Respondent Harris for a period of eighteen months from the date of this Determination. The debarments are "effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 31 March 2008


Henry S. Czauski
Debarring Official